

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

S.B., M.B., J.M., Jr., and G.M., minors, by  
Bruce A. Wolf, their guardian ad litem,

Plaintiffs,

v.

UNITED STATES OF AMERICA and  
STATE OF WASHINGTON,

Defendants.

Case No. C19-69RSL

ORDER

This matter comes before the Court on plaintiffs' "Motion for Attorney/Client Contact." Dkt. #34. Having reviewed the memoranda, declarations, and exhibits of the parties, the Court finds as follows:

Plaintiffs are minor children who are dependents of the Muckleshoot Indian Tribe ("Tribe"). Plaintiffs allege that they suffered years of abuse and neglect in their biological mother's home, and that the Tribe and State of Washington ("State") repeatedly removed and returned them to her home, resulting in continued abuse and neglect. In June 2016, Nickolas Bakke, the father of S.B. and M.B., contacted plaintiffs' counsel, who investigated plaintiffs' allegations and determined that they had viable claims against the State and the Tribe. Meanwhile, plaintiffs' counsel petitioned the King County Superior Court requesting the appointment of Bruce A. Wolf as plaintiffs' limited guardian ad litem ("GAL"). Plaintiffs subsequently brought the instant action pursuant to the Federal Tort Claims Act ("FTCA"), alleging claims for negligent investigation and negligence against the United States and the

1 State. See Dkt. #14 at ¶¶ 5.1-5.6. On August 23, 2019, the Tribe successfully moved to vacate  
2 Wolf's GAL appointment in King County Superior Court on grounds that the Tribal Court had  
3 exclusive jurisdiction over the children's dependency matters. Thereafter, plaintiffs moved this  
4 Court for appointment of a GAL under Federal Rule of Civil Procedure ("Rule") 17(c)(2). Dkt.  
5 #24. On November 7, 2019, this Court issued an order declining to appoint a GAL for plaintiffs  
6 on the ground that no GAL was necessary because plaintiffs' counsel could adequately represent  
7 plaintiffs' interests. See Dkt. #31. Plaintiffs' counsel now asserts that he has remained unable  
8 to meet with his clients. He accordingly moves for an order directing defendants "to take such  
9 steps that will allow these meetings to occur." See Dkt. #34 at 1.

10 Defendants oppose plaintiffs' motion. See Dkts. #35, #38. The United States argues  
11 that, because the Tribal Court has exclusive jurisdiction over the plaintiffs' dependency  
12 proceedings, the United States lacks authority to facilitate plaintiffs' counsel's contact with his  
13 clients. The United States urges plaintiffs' counsel to petition the Tribal Court for access to the  
14 minor plaintiffs in this matter.

15 The Court agrees with plaintiffs' counsel that plaintiffs' current lack of access to counsel  
16 must be remedied. Cf. Danny B. ex rel. Elliott v. Raimondo, 784 F.3d 825, 831-34 (1st Cir.  
17 2015). However, as the United States emphasizes, the Indian Child Welfare Act ("ICWA")  
18 "confers exclusive jurisdiction upon tribal courts over an Indian child who is domiciled on a  
19 reservation." Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian Nation,  
20 331 F.3d 1041, 1045 (9th Cir. 2003). While plaintiffs' counsel argues that the ICWA is not  
21 applicable in this case, the Court is not persuaded that it has jurisdiction to compel the United  
22 States to facilitate contact between him and the minor plaintiffs, who are dependents of the  
23 Tribe. Although an apparent structural conflict prevents the Tribe from representing plaintiffs'  
24 interests in this action, the Tribe has emphasized its willingness to seek joint appointment of an  
25 independent GAL and/or to facilitate contact between plaintiffs' counsel and plaintiffs through  
26 the Tribal Court. See Dkts. #36 (Cable Decl.); #36-1 (Ex. A); #36-2 (Ex. B); #36-3 (Ex. C).  
27 Plaintiffs' counsel has not articulated why he is unwilling to coordinate with the Tribal Court to  
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1 ensure that the minor plaintiffs' interests are adequately safeguarded,<sup>1</sup> and the Court has no  
2 reason to doubt the Tribal Court's assertion of its willingness to do so.

3 In the Court's view, all parties are committed to doing right by the minor plaintiffs, and  
4 we cannot allow structural arguments to defeat that key purpose. Accordingly, plaintiffs'  
5 counsel should contact the Muckleshoot Tribal Court to coordinate the contact plaintiffs must  
6 have with their counsel. The United States should assist with facilitating that contact.  
7 Plaintiffs' Motion for Attorney/Client Contact (Dkt. #34) is DENIED.

8 IT IS SO ORDERED.

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10 DATED this 23<sup>rd</sup> day of July, 2020.

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14 Robert S. Lasnik  
15 United States District Judge  
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25 <sup>1</sup> In a footnote in his reply, plaintiffs' counsel expresses concern that if he seeks relief with the  
26 Tribal Court, Muckleshoot Child and Family Welfare Ordinance 12.01.080, which prohibits "[d]amage  
27 suits against any employee, officer, or agent of the Muckleshoot Indian Tribe . . . for disputes arising  
28 under this ordinance or the regulations promulgated hereunder," see Dkt. #36-4 (Ex. D) at 6, might  
"forbid [him from bringing] any action against the Tribe." Dkt. #39 at 5 n.2. The Court does not share  
this concern, as plaintiffs' counsel does not explain why this ordinance would bear any relevance in a  
federal FTCA action in which the Tribe is not named as a defendant.